

THE ESTABLISHMENT OF A NATIONAL PREVENTIVE MECHANISM FOR KOSOVO

Introduction

The Kosovo Rehabilitation Centre for Torture Victims (KRCT), founded in 1999, is an independent, non-governmental and non-profit organization with the mission to raise the psychosocial welfare of torture victims. KRCT is engaged in advocacy and lobbying activities to increase awareness of legislative and governmental bodies about international Human Rights standards. With the support of the Swedish Helsinki Committee and the European Commission Liaison Office, the organisation has been running since 2007 a project of visits and monitoring of places of detention financed. The team composed of doctors, lawyers and human rights specialists is regularly visiting the correctional centres, detention centres and police holdings cells to monitor the conditions of detention and their compliance with national and international standards against torture. Findings and recommendations have been regularly presented to the relevant authorities and summed up in the reports on Human Rights in detention places¹ released in December 2008.

This newsletter aims at raising awareness of the public about the relevance for Kosovo to establish a National Preventive Mechanism (hereafter NPM) according to the provisions of the Optional Protocol of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter OPCAT)², in order to concentrate and to rationalize the different efforts committed to the improvement of detention conditions in Kosovo within a national and sustainable body.

The OPCAT mechanisms

In order to open the way for a regular monitoring of the conditions of detention worldwide, the OPCAT is foreseeing two mechanisms dedicated to the prevention of torture and ill-treatments in detention places³. This includes of course detention and correctional centers, police holding cells, refugee centers, psychiatric hospitals but also every facility where persons are detained by the State in an official as well as in an unofficial way. The first mechanism is a new international expert body called the Subcommittee for Prevention of Torture (hereafter the SPT) in charge of assisting States parties in the implementation of the OPCAT. The SPT is entitled to visit all detention places within the territory of every State party in order to guarantee the compliance of the practices with the international standards against torture and ill treatment⁴. The SPT represents a great step for the improvement of international control of detention conditions worldwide. However, as long as Kosovo, due to lack of recognition by the UN General Assembly,

¹ The reports are available at: http://krct.org/index.php?option=com_content&task=view&id=77&Itemid=135

² Adopted by the UN General Assembly in June 2006, actually (august 2009) signed by 73 countries and ratified by 49 of them, including, in the neighboring of Kosovo: Albania, Bosnia-Herzegovina, Croatia, FYR Macedonia, Montenegro, Serbia and Slovenia

³ "Places of detention" is defined by the OPCAT (art 4) as any "place under the jurisdiction and control (of the state) where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence".

⁴ OPCAT art 11§1(a)

is not in position to ratify UN instruments, the mandate of the subcommittee couldn't apply within its territory.

The Second mechanism foreseen by the OPCAT is the establishment of a National Preventive Mechanism (NPM), in each state party. The NPM is designed to fulfill the same tasks than the SPT, with which he is working in close collaboration, but on a national level. The general aim is to guarantee in every country the existence of a permanent structure mandated to strengthen the rights of people deprived of their liberty through a sustainable and nationally financed body.

The tasks of the National Preventive Mechanism

1. Mandate for preventive visits of places of detention

The NPM shall be granted by the states authorities the mandate to “regularly examine the treatment of the persons deprived of their liberty in places of detention (...) with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment”⁵. The concept of NPM has been designed not only as a control mechanism but above all as a preventive body, and it is aimed at generalizing and institutionalizing visits independently of allegations of torture or ill-treatments. Specifically, the NPM must be granted the right to visit all facilities of all places of detention without prior announcement, to have access to all information about the conditions of detention and to conduct confidential interviews with any inmate, without prior selection from the authorities⁶. According to the international practice of detention monitoring, a particular attention has to be devoted to the design of infrastructure, the activities available for the inmates including work, leisure and training, the behavior of the staff, the contact with the outside world and the quality of food, hygiene and health facilities. The NPM is also in charge of controlling that detainees have the possibility to exercise their legal rights, i.e. having access to a lawyer or the opportunity to complain to the management or to the institution of the Ombudsperson in case of torture or ill-treatments⁷.

2. Responsibility to formulate observations and recommendation

The NPM has clearly been created as a state contact body and it has to be able to “make recommendations to the relevant authorities⁸ (Ministry of Justice, Ministry of Internal Affairs, Ministry of Health, authorities in charge of the Correctional Service, Police authorities etc...)”. The NPM shall also be able “to submit proposals and observations concerning existing or draft legislation”⁹ in order to guarantee the compliance with international standards against torture. Its observations and recommendations have to be taken into account, have to receive a quick reply from the competent authorities and, of course, must give raise to tangible improvement in the detention conditions.

The NPM establishment process

Based on its specific framework, every country holds a large power of decision to determine which structure is the most adapted to fulfill the role of NPM. It can be composed of one or several different

⁵ OPCAT art 19 (a)

⁶ OPCAT art 20

⁷ For further informations about the concrete conduct of a monitoring visit, check the “CPT standards” leaflet: <http://www.cpt.coe.int/EN/docsstandards.htm>

⁸ OPCAT art 19 (b)

⁹ OPCAT art 19 (c)

bodies under State authority (Institution of the Ombudsperson, Independent Human Rights Commission) and /or of one or several organizations issued from the Civil Society (NGOs or Associations specialized in Human Rights). In this matter, the Association for the Prevention of Torture (APT)¹⁰ and the SPT¹¹ enhance that the establishment of the NPM has to be based on a consultation with the Civil Society.

The APT evokes some precise conditions that a body has to fulfill in order to be nominated NPM. First, it has to be inclusive and concretely involve all the relevant actors active in the field, including potential non-governmental organizations. It is crucial to keep in mind that the NPM should be created to improve the general monitoring of places of detention and couldn't in any case be an excuse for sidelining an active and efficient Civil Society actor or to suppress his authorization of access to detention places. Regardless of the chosen structure, the Civil Society should play an important consultative role with the NPM, both in a control and in an advisory logic. Secondly, it is imperative for the NPM to be independent from the State and transparent about its functioning and results. There lie all the potential limits of the system created by the OPCAT. It requires a body subsidized by the State but sufficiently independent from it to be able to objectively criticize the functioning of the authorities. This idea is not innovative in countries with a tradition of Ombudsperson Institution or Independent Commission in charge of the defense of citizens against State abuses, but could represent a real challenge in emerging democracies.

Different potential structure of NPMs worldwide

Based on a survey of the different NPM created worldwide during this last three year, the Association for the Prevention of Torture listed different potential types of NPM structures¹².

Creation of Ad-hoc structure

Some countries¹³ have decided the creation of a totally new structure (for example an "Independent National Commission against Torture"). This type of process requires quite important investments and is mostly adapted to countries where there is no existing body able to be nominated as NPM.

Designation of the institution of the Ombudsperson

Most of the countries¹⁴ which ratified the OPCAT have chosen to nominate as NPM an existing body dedicated to the mediation and investigation of complaints from particulars (mostly the Institution of the Ombudsperson or a National Commission for Human rights). This solution, of course, is the one that implies the lower cost and the less organization. It however raises the problem of the control of the NPM's independence by the Civil Society. In order for a NPM to fully complete its mandate, it is capital for him not to be subject to any partisan, ethnical or national pressure. This solution can be problematic in countries where the democracy is quite recent and where the logic of check and balance within the State system is not well established yet, as it implies an important risk of politicization of the institution of the Ombudsperson.

¹⁰ The APT is the international NGO, based in Geneva, which is behind the adoption of the OPCAT.

<http://www.apr.ch/index.php?lang=en>

¹¹ SPT 1 report, 14th May 2008, p.31

¹² For more information, please consult the rapport: "Civil Society and National Preventive Mechanism" published by the ATP in June 2008 and available at:

http://www.apr.ch/component/option,com_docman/task,search_result/Itemid,59/lang,en/

¹³ Until now, this solution has been adopted by France, Honduras, Liechtenstein, Mali, Senegal, Uruguay, and recently Switzerland.

¹⁴ This is the case of Albania, Armenia, Azerbaijan, Costa Rica, Czech Republic, Estonia, Maldives, Malta, Mauritius, Mexico, New Zealand, Poland, Sweden and UK

Designation of the institution of the Ombudsperson in association with NGOs

An alternative proposition (the so called “Ombudsperson plus” model) seems to emerge gradually in few countries¹⁵, enabling to complete the action of the Ombudsperson by the implication of some pertinent local NGOs or associations involved in detention monitoring and possessing a real expertise in this field. In this model, the government selects one or several NGOs or associations with the assistance of the Civil Society, to be not only involved in a consultative role but also to be fully part of the NPM alongside with the Institution of the Ombudsperson. This cooperation is designed to gather different specific expertise and methodologies in order to obtain a more realistic description of the situation in the places of detention. Denmark represents a really relevant example where two NGOs¹⁶ are part of the NPM in order to provide their long term expertise respectively in medical rehabilitation and human rights. Slovenia, which recently decided to create this innovative type of NPM, also constitutes an interesting experience as it has permitted to create a really integrative body, with the implication of three local NGOs¹⁷ active in Human Rights.

Kosovo framework in term of detention monitoring

Since 1999, the task of monitoring detention places in Kosovo has been assured by different local or international actors, mostly outside the State scope. Among Civil Society actors and beside the KRCT, the Council for the Defense of Human Right and Freedom (CDHRF), a local NGO, is also conducting detention monitoring activities. The Organization for the Security and Cooperation in Europe (OSCE), within the framework of the Security Monitoring Section, is currently running a preventive monitoring visit project in order to provide the authorities with confidential observations and recommendation. On a State level, the Institution of the Ombudsperson is running regular preventive visits in detention places and is addressing individual complains of inmates. The conclusions and observations are published in the annual report of the institution of the Ombudsperson addressed to the Assembly of Kosovo and available to the public. From March 2004 to June 2009, Mr. Hilmi Jashari¹⁸ was fulfilling the position of acting Ombudsperson in absence of an officially elected Ombudsperson by the Parliament. The appointment of Mr. Sami Kurteshi as Ombudsperson in June this year raises good perspectives of cooperation in view to establish a NPM. Beside the organizations listed above having a presence in Kosovo, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Kosovo in March 2007 under an agreement made with the United Nations Interim Administration Mission in Kosovo (UNMIK) in August 2004. Its report was released in January 2009¹⁹. Here also, due to the actual impossibility for Kosovo to become party to the European Convention for the Prevention of Torture, it is not certain that the mandate of the CPT will apply to Kosovo territory in the future.

Interest for Kosovo to establish a NPM

The ratification of OPCAT by Kosovo is currently not possible due to the absence of its recognition as a State by the United Nations. Nevertheless, Kosovo is free to implement its prescriptions in order to raise itself to the level of best international practices pertaining to torture and ill-treatment prevention. Being able to

¹⁵ This model has until now been adopted by the Denmark, FYR Macedonia, Moldova and Slovenia

¹⁶ “The Rehabilitation and research Centre for Torture Victims” (<http://www.uk.rct.dk/>) and “The Danish Institute for Human Rights” (<http://humanrights.dk/>)

¹⁷ “The Primus Institute” (<http://institut-primus.nvo.si>), “the Legal information centre for NGOs” (<http://www.pic.si>) and “The Slovenian Red Cross” (<http://www.rks.si>)

¹⁸ Now Deputy Ombudsperson

¹⁹ CPT/Inf (2009) 3

Preventing torture and other forms of Human Rights violations in places of detention in Kosovo



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create a process of independent and transparent self-monitoring is a relevant indication that rule of law is respected and is also crucial in prevision of the ratification of international conventions as well as for a future adherence to international and regional organizations. KRCT is convinced that the establishment of a National Preventive Mechanism would represent numerous advantages for Kosovo both in terms of respect for Human Rights and of compliance with international and European standards.

Kosovo benefits of a functioning system of detention monitoring with an efficient combination of a public institution, international organizations and organizations from the Civil Society. The principal challenge therefore doesn't lie in the creation of the structure but in its optimization to insure its long term sustainability. As it is capital to improve the communication and the collaboration between all actors involved in detention monitoring, the NPM would represent a form of superior coordinating body essential to ensure the continued existence of an efficient detention monitoring system in Kosovo. As the involvement of International Organizations and funding agencies will eventually be reduced in Kosovo, it is important to have a national mechanism of monitoring with a strong legal basis and subsidized by the State. Relying mostly on International organization and Civil Society actors can be in no case considered as a long term solution. First because it means that the access to places of detention is only guaranteed by ad-hoc permissions which are at risk of not being renewed. Secondly because it implies relying on international funding, which are by themselves fluctuant and hardly predictable. The establishment of a NPM would insure a permanent and regular mechanism independent of the international and national political framework. In the eyes of KRCT, the solution of the "Ombudsperson plus model" offers some really interesting perspective in the case of Kosovo. It would allow to really implicating all the national relevant actors (the institution of the Ombudsperson and relevant organizations from the Civil Society) within a cooperative body that would fulfill all OPCAT prescription in terms of transparency and inclusiveness.

Conclusion

Within the framework of the project "Preventing torture and other forms of HR violations in places of detention in Kosovo" KRCT is organizing a Roundtable on Thursday 24 September in Afa in Pristina in partnership with the Office of the High Commissioner for Human Rights. This event will be an opportunity to raise awareness about the notion of NPM, what it implies and how it could efficiently contribute to the prevention of torture and other forms of ill-treatments in Kosovo. It will also be an opportunity to gather the various actors who could play a role in the establishment of such a mechanism and start a discussion about how it could be practically implemented. It is notably important to identify the existing monitoring bodies, to discuss about the various possible models and about how this mechanism could operate in order to be fully efficient and complement the work of other monitoring bodies. The discussion will also be an opportunity to share the experience of other countries with representatives of NPM of Slovenia and Denmark. KRCT hopes this event to be a starting point for regular discussions about the establishment of a NPM in Kosovo.

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